

(2003) 01 MAD CK 0079

In the Madras High Court

Case No : Writ Petition No. 1534 of 2001 and W.M.P. No. 2093 of 2001

P. Lakshmanan, R. Rajendra Kumar and A. Abubakkar Sithic APPELLANT
Vs

The Commissioner, Corporation of Chennai, S. Sheik Meeran, RESPONDENT
A. Xavier Arulraj, V. Murugan, K. Eswaran, G.
Gopalakrishnan, B. Selvam and P. Ramkumar

Date of Decision : 08-01-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 01 MAD CK 0079

Hon'ble Judges : E. Padmanabhan, J

Bench : Single Bench

Advocate : R. Sureshkumar, for the Appellant; P. Bagiyalakshmi, for R1 and P.R. Murari, for R2 to R8, for the Respondent

Final Decision : Allowed

Judgement

1. The petitioners have prayed for the issue of a writ of certiorarified mandamus to call for the records in respect of the impugned proceedings of

the first respondent, namely, Commissioner, Corporation of Chennai in HDC No. C1/8364//99 dated 19.12.2000, quash the same insofar as it

relates to respondents 2 to 8 are concerned and direct the first respondent to give appointment to the petitioners as birth and death clerk in the

Chennai Corporation.

2. The three petitioners claim that on completion of +2, they have successfully secured the Sanitary Inspector's Certificate course at Gandhigram

Rural Institute during May 1992. The petitioners registered themselves with the District Employment Exchange, Tirunelveli, in the year 1991-92.

The minimum qualification for appointment to the post is passing the Sanitary Inspector's Certificate Course and the petitioners are eligible for

being appointed as Birth and Death Clerk in the local bodies including the respondent Corporation. The said posts are being filled up by inviting

nominations from the employment exchanges at various Districts. Selection will be conducted by the first respondent for appointment. The

petitioners" have been waiting for eight long years for being called for interview. The petitioners" were not selected on the earlier occasions.

3. The Government of Tamil Nadu issued G.O. Ms. No. 129 Municipal Administration and Water Supply Department dated 20.7.98 setting out

the guidelines to be followed by various appointment committees in all local bodies in respect of direct appointment. One of the main guidelines

being guideline No. 3, which directs that all the appointments should be made out of the candidates sponsored by the employment exchange strictly

on the basis of seniority subject to communal rotation. In case of a candidate, who is eligible, but he is over aged, if he is within six months from the

date of selection, such candidate could be given preference. The said Government Order and the directions or guidelines issued by the State is

mandatory.

4. The first respondent Corporation issued a call letter for direct interview to the petitioners" herein on 13.9.2000 for the post of Birth and Death

Clerks. The petitioners were called upon to appear with their certificates for verification on 22.9.2000 and for interview on 23.9.2000 at 10.00

a.m., at Rippon Buildings. All the three petitioners" appeared, produced their certificates for verification and attended the interview. The

petitioners" attended the interview and formal questions alone were put to all the candidates and no question was put on any other subjects. The

petitioners" were informed that after making selection on the basis of employment exchange seniority, appointment orders will be issued.

5. The petitioners" came to know that the first respondent issued appointment orders on 19.12.2000 appointing 24 persons as Birth and Death

Clerks in the existing vacancies, but the petitioners" name did not find a place. It is alleged that atleast seven candidates, who registered latter to

the petitioners with employment exchanges were given appointment in the quota reserved for backward classes and they have been allotted under

the ""OC"" category and some of them have been given posting under the ""BC"" category itself. Thus the appointment of respondents 2 to 8 is per se

illegal and violative of the directions issued by the State Government. The selection of the said respondents is arbitrary and there is no justification

or reason or rhyme to prefer them when selection has to be strictly according to the employment exchange seniority. It is pointed out that seven

candidates out of 24 are far juniors to the petitioners" compared with their date of registration in the employment exchange. Challenging the said

appointment, the present writ petition has been filed. It is contended that the impugned order of the first respondent dated 19.12.2000 is per se

illegal, arbitrary, violative of G.O. Ms. No. 129 Municipal Administration and Water Supply Department dated 20.8.1998, offend Articles 14 and

16 and, therefore, the selection and appointment of respondents 2 to 8 are illegal and liable to be quashed by this Court.

6. On behalf of the first respondent, a counter has been filed by the Commissioner. It is admitted that the petitioners appeared for interview on

23.9.2000 and their certificates were perused and verified. G.O. Ms. No. 129 MA & WS Department dated 20.8.1998 direct that the

appointment should be made by the appointments committee on communal rotation from the list of candidates sponsored by the employment

exchange based on employment exchange seniority only. The said Government Order also further directs that in case eligible candidate exceeds

thirty years of age, within six months from the date of appointment, the appoint committees meeting, he has to be given priority in selection. The

respondent Corporation followed the said guidelines while filling up the post of Birth and Death Clerks. At the time of receiving the list from the

employment exchange itself, one P.Lakshmanan, is over aged and as he has not secured the degree qualification he has not been exempted in

respect of rule relating to age. Lakshmanan was not selected as he is not eligible. As regards the other two petitioners as well, they have not

reached their seniority on the basis of communal rotation. Hence, the three petitioners were not considered for appointment.

7. The following points arise for consideration in this writ petition :-

i) Whether the non-consideration and non selection of the petitioners" vitiates the entire selection held by the first respondent to fill up the post of

Birth and Death Clerks ?

ii) Whether the selection of respondents 2 to 8 is illegal, arbitrary and violative of

the directions issued by the State Government in G.O. Ms. No.

129 MA &WS Dept., dated 20.7.98 ?

iii) To what relief, if any, the petitioners" are entitled to ?

8. There is no dispute that the petitioners" as well as all the candidates who have taken part in the process of selection are qualified Sanitary

Inspectors as they have passed the certified course in Sanitary Inspector conducted by Gandhigram Rural Institute. The first petitioner, as seen

from the counter affidavit has not been considered for selection as according to the respondents, he is over aged. The other two petitioners" were

also not selected as they did not reach sufficient seniority in the communal rotation.

9. A perusal of the proceedings of the first respondent dated 19.12.2000 would show that in all about 24 candidates were selected and appointed

after calling for candidates from various employment exchanges in the State. In Column No. 1 of the proceedings, the Name, Date of Registration

with the employment exchange Number are set out. In Column No. 2, the social status of the candidate has been set out. In Column No. 3 the

vacancy against which each individual has been appointed has been set out. The learned counsel for the petitioner rightly drew the attention of the

Court to candidates in serial Nos.1, 5, 7, 11, 13, 17, 19 and 23 and pointed out that they have registered themselves with the respective

employment exchanges much subsequent to the three petitioners. The first petitioner, Lakshmanan was born on 2.1.1970, he has registered himself

with the employment exchange on 8.8.91 and his Registration number being 11505/91. The 2nd petitioner, Rajendrakumar was born on 30.7.73.

He has registered himself with the employment exchange on 3.9.92 and his registration number is 13023/92. The third petitioner, Abubakkar Sithic

was born on 26.5.73. He has registered himself with the employment exchange on 25.9.92 and his registration number is 13697/92. It is useful to

extract the very impugned proceedings as hereunder as details of selected candidates are set out in detail:-

S. No. Name and Employment Exchange No. & Communal Rotation Vacancy in which appointed

Registration No., Date & Address

1 Th. J. Manimurugan, 15478/99 S.F.11.10.99 O.C. (P) Th. S. Mohankumar

48, Sankara Vinayagar Koil Street, B&O Clerk Discontinued w.e.f. 1992

Puliangudi, Pin 627855

2 Th. A. Elangovan, T/1689/93 S.F.16.9.87 B.C. (N.P.) Th. T. G. Srinivasan

S/o. A. Azhagar, 81, II Street, promoted as S.I., on 18.6.97 Z-I

Giri Amman Koil Street, Peelamedu

Coimbatore 641 004.

3 K. Kannan, 1908/99, S.F. 09.08.91 S.C. (W) (N.P.) as there was no woman candidate

S/o. A. Kilavan, 22 G/2. Kalathavoor available men candidate was selected

Soorankottai Post, Ramanathapuram Dist. Th. M. Sivaraman, promoted as S.I. On 18.6.97 Z-I

4 M. Ramkumar, 8578/97, S.F.11.12.89 M.B.C. (N.P.) Th. D.W. Santhosh,

S/o. S. Muthukrishnan promoted as S.I. On 18.6.97 Z-VI

324, O.N.G.O. Colony East, Dindigul

Pin 624 009.

5 S. Sheik Meeran, 11862/93, S.F.30.7.93 O.C. (W) N.P. No women candidate men

S/o. Ushahul Hameed, 35, East Mosque Street candidate was selected, Th. K. Shahul Hameed

Puliangudi, Pin 627 855 Tirunelveli (Dt.) promoted as S.I. On 18.6.97, Z-VI

6 A. Manjeer Hussain, 8184/89, S.F.10.8.89 B.C. (W) (P) No Women candidate men

S/o. B. Abdul Kuthoosa, No. 9, Pookara Street candidate was selected Th. K. Vasudevan

Manubai Sahib Lane, Dindigul 624 001. promoted as S.I., on 18.6.97, Z-VI

7 A. Xavier Arulraj, 12096/93, S.F.5.8.93 O.C. (N.P.) Th. A.Sadasivam,

S/o. M.Arockiam, 1/133C, West Street promoted as S.I., on 18.6.97, Z-II

Vadiyur Post

V.K. Pudur (via) Tenkasi

Taluk 627 861.

8 B. Mariraj, 12844/90, S.F.1.8.90 B.C. (N.P.) Th. P. Ponmurugan,

S/o. P.S. Balasubramanian promoted as S.I., on 18.6.97, Z-II

9/27, Bagavathiamman Koil Street, Puliangudi

627 855.

9 V. Moorthy, 7874/92, S.F.9.9.92 S.C. (N.P.) Th.S.Meenakshi Sundaram,
S/o. K. Vinayagam, 14th Ward Obulapuram promoted as S.I., on 18.6.97, Z-VII
Ayakudi (P.O.), Dindigul (Dt.)

10 P. Jayamurugan, 22236/97 S.F. 31.7.90 M.B.C. (P) Th. G. Sundararajan
C/o. N. Loganathan, Periyar English School promoted as S.I., on 18.6.97, Z-VII
Balakrishnapuram, Karupatti Post (Vadipatti
Taluk) Madurai (Dt.)

11 V. Nagarajan, 15337/97, S.F.6.8.93 O.C. (P) Th. S. Deivam
S/o. Venugopalan, 4/17 F, South Street promoted as S.I., on 18.6.97, Z-VII
Aseshan 614 001, Mannargudi (Tk.)

12 R. Koil, 13423/90 S.F. 13.8.90 B.C. (W) (N.P.) No women candidate
S/o E. Ranjitha Nadar, No. 3, men candidate was selected Th. D. Kannan,
Vinayagar Koil South Street promoted as S.I., on 18.6.97, Z-X
T.N. Puthukudi, Puliangudi (P.O.) 627 853.

13 V. Murugan, 12168/93 S.F. 6.8.93 O.C. (W) (N.P.) No women candidate
S/o R.Vaithilingam, 186, West Street men candidate was selected Th.
V.Vijayakumar

Aladipatti Post, Nallur 627 853. promoted as S.I., on 18.6.97, Z-IX

14 A. Eswaran, 29079/97 S.F. 6.8.90 MBC (N.P.) Th.A.Chandrasekaran,
S/o S. Ayyanar, 168E, Nethaji Nagar promoted as S.I., on 18.6.97, Z-XV
Kaliamai Road, Alanganallur P.O.

Vadipatti T.K. 625 501.

15 A.K.Anbazhagan, 1269/94, S.F.23.8.94 B.C. (N.P.) Th. K. Murugesan,
S/o A. Krishnan, Pattiveeranpatti P.O. promoted as S.I., on 18.6.97 Z-X
Alagasuri Nilakottai (Tk.),
Dindigul 624 211

16 S. Arulalan S/o K. Sambandan B.C. (P)

OGM 15325 S.F.10.4.91 C/o K. Viswanathan Th. K.R. Surendran, promoted as

S.I., on 18.6.97,

G.40, Anand Square 35, Govindan Street Z-V

West Mambalam Chennai.

17 K. Eswaran T/2230/96 S.F.11.8.93 C.Selvaraj, promoted as S.I., on 18.6.97, Z-V

S/o Karuppannan Amaravathi Sugar Mills

Krishnapuram Post Udumalai (Tk.)

Coimbatore (Dt.) O.C. (N.P.)

18 G. Gopalakrishnan 21252/97 S.F. 9.8.91 Th.A.Ramaraj, promoted as S.I., on 18.6.97, Z-IX

S/o G. Govindaraj Thathanpatti T. Vadipatti

Madurai Dt. 624 218.

B.C. (N.P.)

19 B.Selvam 1305/95 S.F. 4.2.95 B.C. (W) (N.P.) No women candidate men candidate

S/o S.Bala Form Hill Police Colony was selected Th. R. Kannan, promoted as S.I., on

Kodaikanal 624 101. 18.6.97, Z-V

20 A.K. Prabhakaran 8287/97 S.F. 4.9.90 B.C. (W) (N.P.) No women candidate men was

S/o Jayaraman 21-A, Karungattu selected Th. C. Periyakaruppan, promoted as S.I., on

Palanisamy Street Nilakottai 18.6.97 Z-XV

Namakkal 637 001.

21 P. Murugan 1319/95 S.F. 18.4.95 B.C. (N.P.)

S/o M. Palanichamy Thali Village, K.R. Kottai Th. S. Sivakumar, promoted as S.I., on 18.6.97, Z-VI

(Post) Nilakottai (Tk.) Dindigul (Dt.)

22 R. Seenivasan 2952/91 S.F.10.1.91 B.C. (N.P.)

S/o V.Ramasamy 2/3 16, sindhu Illam Th. P. Selvaraj, promoted as S.I., on 18.6.97, Z-VII

N.G.O. Colony, Bagalur Road, Hosur (Tk.)

Dharmapuri (Dt.)

23 P.Ramkumar T/1881/93 S.F. 12.08.93 O.C. (N.P.)

S/o P. Palaniyandi 5/32, Siruvani Road Th. S. Ravichandran promoted as S.I., on 18.6.97, Z-VII

Alandurai Coimbatore 641 101.

24 S. Krishnan 21253/97, S.F. 9.8.91 MBC (W) (N.P.) No women candidate. Men candidate was

S/o Elanathan C/o S. Kumaresan selected Th. S. Ravindran, promoted as S.I., on 18.6.97,

5, Ellaivoor, Thetru PO Vadipatti (Tk.) Z-VIII

Madurai (Dt.) 625 503.

10. A perusal of the above materials as disclosed in the impugned proceedings would show that Serial Nos.1, 5, 7, 13, 17, 19 and 23 are

persons, who have registered with the respective employment exchanges long after the petitioners. Taking up S.Shiek Meeran (s. No. 5), he

belongs to ""OC"" and he has been selected in the place of a post reserved for woman as no women candidate was available, though he has

registered with the employment exchange only on 30.7.93. Taking up A. Xavier Arulraj (S. No. 7), he has registered with the employment

exchange on 5.8.93 and he is a member of ""Other Community"". So also V. Murugan (S. No. 13), who has registered with the employment

exchange on 6.8.93 and he is a member of ""Other Community"" and he was selected as no women candidate is available. K.Eswaran (S. No. 17)

is also a member of ""Other Community"". He has registered on 11.8.93 with the employment exchange. B. Selvam (S. No. 19) has registered only

on 4.2.95 and he has been selected in lieu of women candidate. P. Ramkumar (S. No. 23) has registered with the employment exchange on

12.8.93. He is a member of ""Other Community"".

11. The petitioners have registered themselves with the employment exchange as already detailed above respectively on 8.8.91, 3.9.92 and

25.9.92. Therefore, they have registered themselves earlier in point of time.

12. It is true communal rotation is required to be followed, besides other rotation but it is also settled law that when a backward class or Most

Backward Class do not stand a chance in the respective rotation, they could be

considered as against Other Community as has been held by this

Court in a number of pronouncements. If the petitioners have been considered in the open competition, which is earmarked for "OC", which is

also legally valid, they could have been selected as they have registered themselves with employment exchange earlier in point of time. But for

reasons best known, as set out in the counter affidavit, the respondent has not considered the petitioners at all. Except stating that the first

petitioner is over aged and, therefore, his name was not considered at all, in respect of others there was no consideration at all.

13. It is true that the first petitioner was born on 2.1.70 and he has completed 30 years as on 1.1.2000. The vacancies have been notified even

during the year 1999. On the date of notification issued calling for candidates and the last date before which the application has to be submitted,

which is the crucial date, it cannot be said that the first petitioner is over aged and, therefore, he is ineligible. However, in the nature of order, which

this Court proposes to pass, it is not necessary to decide this point finally at this stage.

14. The failure on the part of the respondent to consider the petitioners and the failure to comply with the directions issued by the State

Government in G.O. Ms. No. 129 MA & WS Dept., dated 20.7.98 and in particular clauses 1 and 3 renders the selection of respondents 2 to 8

illegal, arbitrary, violative of Article 14 and 16 of the Constitution. On this short ground the selection of respondents 2 to 8 by the impugned

proceedings are quashed and the matter is remitted back to the first respondent for do novo consideration of the petitioners' claim vis-a-vis other

candidates, who have not been considered or selected, hold a selection according to the said G.O. Ms. No. 129 MA & WS Department and pass

orders within a period of three months from the date of communication of this order.

15. This writ petition is allowed in the above terms. No costs. Consequently, connected miscellaneous petition is closed.